



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2017-7]

Modernizing Copyright Recordation

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The United States Copyright Office is proposing to amend its regulations governing recordation of transfers of copyright ownership, notices of termination, and other documents pertaining to a copyright. These amendments are being proposed in conjunction with the anticipated commencement of development effort for a modernized electronic recordation system.

DATES: Written comments must be received no later than 11:59 p.m. Eastern Time on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the Copyright Office website at <https://www.copyright.gov/rulemaking/recordation-modernization>. If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Sarang V. Damle, General Counsel and Associate Register of Copyrights, by email at sdam@loc.gov, or Jason E. Sloan, Attorney-Advisor, by email at jslo@loc.gov. Each can be contacted by telephone by calling (202) 707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1870, the U.S. Copyright Office has recorded documents pertaining to works under copyright, such as assignments, licenses, and grants of security interests. Relevant here are the three primary types of documents submitted to the Copyright Office for recordation: transfers of copyright ownership,¹ other documents pertaining to a copyright,² and notices of termination.³ Pursuant to 17 U.S.C. 205(a), “[a]ny transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office if” certain conditions are met.⁴ Under the Copyright Act’s notice of termination provisions in sections 203(a)(4) and 304(c)(4), “[a] copy of the notice shall be recorded in the Copyright Office before the effective date of termination, as a condition to its taking effect,” and such “notice shall comply, in form, content, and

¹ A “transfer of copyright ownership” is defined in section 101 of the Copyright Act as “an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.” 17 U.S.C. 101. Their validity is governed by 17 U.S.C. 204.

² A document “pertaining to a copyright” is currently defined by the Office as one that “has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, transfer, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.” 37 CFR 201.4(a)(2).

³ A “notice of termination” is a notice that terminates a grant to a third party of a copyright in a work or any rights under a copyright. Only certain grants may be terminated, and only in certain circumstances. Termination is governed by three separate provisions of the Copyright Act, with the relevant one depending on a number of factors, including when the grant was made, who executed it, and when copyright was originally secured for the work. *See* 17 U.S.C. 203, 304(c), 304(d).

⁴ 17 U.S.C. 205(a); *see also id.* at 205(b) (“The Register of Copyrights shall, upon receipt of a document as provided by subsection (a) and of the fee provided by section 708, record the document and return it with a certificate of recordation.”).

manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.”⁵ These provisions also apply to section 304(d)(1), another termination provision, which incorporates section 304(c)(4) by reference.⁶ More broadly, section 702 of the Act authorizes the Register of Copyrights to “establish regulations . . . for the administration of the functions and duties made the responsibility of the Register under [title 17],” and section 705(a) requires that the Register “ensure that records of . . . recordings . . . are maintained, and that indexes of such records are prepared.”⁷

Congress has encouraged the submission of documents for recordation by providing certain legal entitlements as a consequence of recordation. For example, recordation provides constructive notice of the facts stated in the recorded document when certain conditions are met.⁸ In addition, recordation is a condition for the legal effectiveness of notices of termination.⁹ Thus, the Office has an important interest in ensuring that the public record of copyright transactions is as timely, complete, and accurate as possible.

The current recordation process is a time-consuming and labor-intensive paper-based one, requiring remitters to submit their documents in hard copy. Once received, Office staff must, among other things, digitize the paper document, process the fee payment including confirming that the correct fee was submitted, examine the document to confirm its eligibility for recordation, search through the document for various and often extensive indexing information, manually input such information into the Office’s

⁵ *Id.* at 203(a)(4), 304(c)(4).

⁶ *Id.* at 304(d)(1).

⁷ *Id.* at 702, 705(a).

⁸ *Id.* at 205(c).

⁹ *Id.* at 203(a)(4)(A), 304(c)(4)(A), 304(d)(1).

public catalog, and print and mail back to the remitter a copy of the document marked as having been recorded along with a certificate of recordation. This process can also involve considerable correspondence with remitters to remedy deficient submissions before they can be recorded. Since late 2014, the Office has permitted remitters to submit some indexing information in electronic form, limited to lists of titles of the works associated with the submitted document, but this too can involve a significant amount of correspondence with remitters and manual input on the part of staff to complete the recordation.¹⁰ Furthermore, electronic submission of documents remains unavailable.

The Office is seeking to modernize this process in coming years by developing a fully electronic, online system through which remitters will be able to submit their documents and all applicable indexing information to the Office for recordation. The amendments proposed today are designed to update the Office's current regulations to govern the submission of documents to the Office for recordation once the new electronic system is developed and launched. Though the Office cannot currently estimate how long it will take to complete the new system, the Office is seeking public comments at this time because the Office must, at present, make a number of policy decisions critical to the design of the to-be-developed system. Additionally, while the proposed amendments are designed with a new electronic submission system in mind, at least some of the proposed changes could be implemented in the near future, without the new system (*e.g.*, accepting electronically signed documents and new requirements for electronic title lists, completeness, and redactions). Thus, to the extent possible under the Office's current paper system, and depending on the comments received in response to this notice, the

¹⁰ See 37 CFR 201.4(c)(4); 79 FR 55633 (Sept. 17, 2014).

Office plans to adopt some aspects of the proposed rule on an interim basis until such time as the electronic system is complete and a final rule is enacted.

The proposed amendments are a continuation of the discussion that began in 2014, when the Office issued a notice of inquiry soliciting public comments on certain aspects of recordation modernization.¹¹ After receiving written comments from 24 stakeholders, the Office held roundtable meetings in California and New York where 48 participants provided further input.¹² This public process led to a 133-page report by the Office’s inaugural Abraham L. Kaminstein Scholar in Residence, Professor Robert Brauneis: *Transforming Document Recordation at the United States Copyright Office* (the “Brauneis Report”). Many of the provisions in the proposed amendments adopt or are based on the recommendations set forth in the Brauneis Report.

II. The Proposed Rules

A. Transfers of Copyright Ownership and Other Documents Pertaining to a Copyright

The proposed amendment to 37 CFR 201.4 will provide a number of necessary updates to the Office’s regulations governing submission for recordation of transfers of copyright ownership and other documents pertaining to a copyright. The general mechanics of the proposed amendment are essentially the same as under the Office’s current rules and policies. To be eligible for recordation, the document must satisfy certain requirements, be submitted properly, and be accompanied by the applicable fee. As before, the date of recordation will be the date when all of the required elements are

¹¹ 79 FR 2696 (Jan. 15, 2014).

¹² ROBERT BRAUNEIS, TRANSFORMING DOCUMENT RECORDATION AT THE U.S. COPYRIGHT OFFICE 8 (Dec. 2014), <https://www.copyright.gov/docs/recordation/recordation-report.pdf>. [hereinafter *Brauneis Report*].

received by the Office, and the Office may reject any document submitted for recordation that fails to comply with the Office's rules and instructions.

Electronic Submissions. The Office proposes permitting remitters to submit documents for recordation electronically through a to-be-developed online system. It is planned that the new system will essentially require remitters to provide four things: the document to be recorded, indexing information about the document (*i.e.*, information necessary for the Office's public catalog), assent to various certifying statements, and payment of the applicable fee.¹³ Rather than continuing to have Office staff search the document for the relevant indexing information and manually input it into the Office's public catalog, the system will instead, as recommended by the Brauneis Report,¹⁴ walk the remitter through the process of providing indexing information directly, which will likely include a bulk-upload feature for documents that pertain to a large number of works. Having the remitter provide this information will be far more efficient than the current process and will allow the Office to record documents much faster and for smaller fees. It should also reduce the chance of errors entering the public record because Office staff will no longer be manually transcribing indexing information. The Office has previously determined that having remitters provide indexing information for recordations is permissible under the Copyright Act.¹⁵

The system will also require a digital scan of the document to be uploaded and for various certifications, discussed below, to be made via the electronic system. Lastly, the

¹³ Appropriate recordation-related fees will be evaluated and determined through a fee study at a later date closer to implementation of the electronic system.

¹⁴ See *Brauneis Report* at 88-96 (noting that stakeholders "generally reacted very positively to the proposal to have remitters submit catalog information").

¹⁵ See 79 FR at 55634-35 (concluding that "the Register may assign the task of indexing to another and issue implementing regulations; her duty is to *ensure* that indexes of records are prepared").

Office currently plans for online payment to be made through Pay.gov. Given the automated nature of the contemplated electronic system, the Office is evaluating whether or not to continue allowing remitters to pay through deposit accounts, which currently is a largely manual, offline process. The Office welcomes comment on this issue, including whether potential users of deposit accounts would be willing to pay a surcharge for the development and maintenance of an automated deposit account system.

Paper Submissions. In addition to electronic submissions, the Office proposes, as the Brauneis Report recommended,¹⁶ retaining a paper submission process similar to the Office's current process. The proposed amendment requires paper submissions to be accompanied by a cover sheet that will likely be similar to the current Form DCS. The cover sheet could, but need not, be used to make the various required certifications discussed below.

Remitters would also continue to be permitted to provide electronic lists of certain indexing information about the works to which the document pertains. As under the Office's current regulations, the electronic list will not be considered part of the recorded document, but will only be used for indexing purposes. The proposed amendment removes much of the current regulation's details surrounding the formatting of electronic title lists, instead specifying that such lists must be prepared and submitted in the manner specified by the Office in instructions it will post on its website. This change will allow the Office to develop easier and more flexible instructions for remitters that can be updated and modified as needed without resorting to a rulemaking. The proposed rule also continues the current rule that the Office may reject improperly prepared electronic

¹⁶ See *Brauneis Report* at 59-60.

title lists. The Office, however, will no longer permit corrections of errors or omissions in electronic title lists (see “Parties Bear Consequences of Inaccuracies” below).

The Office proposes continuing to provide return receipts for paper submissions when a remitter provides two copies of the cover sheet and a self-addressed, postage-paid envelope. As before, this will simply confirm the Office’s receipt of the submission as of the indicated date, but not establish eligibility for, or the date of, recordation.

Originals, Copies, and Actual Signatures. The Office proposes to continue to require, in accordance with section 205(a), that to record a document, remitters must submit either the original document “bear[ing] the actual signature of the person who executed it” or a “true copy of the original, signed document” accompanied by a “sworn or official certification.” An argument can be made, as the Brauneis Report pointed out, that even if a natively electronic document could be considered an “original document,” by submitting it to the Office over the internet through the new system, what the Office receives would nonetheless technically be a “copy” of the original, which would be left on the computer from which the submission was made.¹⁷ A similar argument might be made about electronically signed documents filed either through the paper or electronic submission process. Thus, to avoid any doubt about the sufficiency of a recordation on the basis of whether or not the submitted document is an original or a copy, the proposed amendment would consider any document either submitted electronically through the new system, or lacking a handwritten, wet signature (*e.g.*, any document bearing an electronic signature) to be a “copy” within the meaning of section 205. In practice, this is

¹⁷ See *id.* at 65.

unlikely to significantly affect remitters; the only consequence is that each such submission will need to be accompanied by a sworn or official certification.

One of the more significant proposed changes from current practices concerns the definition of the statutory term “actual signature.” Currently, that term is undefined in the Office’s regulations, but in practice, the Office has required original documents to bear handwritten, wet signatures and copies of documents to reproduce such handwritten, wet signatures. Electronic signatures are not permitted. As the Brauneis Report recommends, the Office proposes to change that.¹⁸

In recent years, courts have found electronically signed transfers of copyright ownership to be valid under 17 U.S.C. 204, which requires that such transfers be “in writing and signed.”¹⁹ These cases turned on the applicability of the Electronic Signatures in Global and National Commerce Act (“E-Sign Act”), enacted in 2000, which provides that “with respect to any transaction in or affecting interstate or foreign commerce . . . a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form.”²⁰ The E-Sign Act also defines “electronic signature” and does so broadly, as “an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”²¹

For instance, in *Metropolitan Regional Information Systems, Inc. v. American Home Realty Network, Inc.*, the U.S. Court of Appeals for the Fourth Circuit held that a

¹⁸ See *id.* at 57, 60.

¹⁹ See, e.g., *Metro. Reg’l Info. Sys. v. Am. Home Realty Network, Inc.*, 722 F.3d 591, 601-02 (4th Cir. 2013) (“[A]n electronic agreement may effect a valid transfer of copyright interests under Section 204 of the Copyright Act.”).

²⁰ 15 U.S.C. 7001(a)(1).

²¹ *Id.* at 7006(5).

subscriber who “clicks yes” in response to an electronic terms of use agreement prior to uploading copyrighted photographs to an online database signed a written transfer within the meaning of 17 U.S.C. 204(a).²² After determining that none of the E-Sign Act’s exceptions applied, the court concluded that “[t]o invalidate copyright transfer agreements solely because they were made electronically would thwart the clear congressional intent embodied in the E-Sign Act.”²³ Similarly, in *Sisyphus Touring, Inc. v. TMZ Productions, Inc.*, the U.S. District Court for the Central District of California found that a valid transfer under section 204(a) had been effected through an email exchange.²⁴ The E-Sign Act was important to the court’s decision that “the emails [were] sufficient to act as [the transferor’s] signature” and that clicking “send” was similar to clicking “yes” as in *Metropolitan Regional Information Systems*.²⁵

Because they bore electronic signatures, neither of the documents at issue in those cases is currently recordable under the Office’s rules and practices. The Office believes it important that this change. The Office’s regulations and processes should be flexible enough to permit any document that may constitute a transfer under section 204 to be recordable under section 205. Thus, the Office proposes defining “actual signature” as any legally binding signature, including an electronic signature as defined by the E-Sign Act. Regardless of whether the E-Sign Act actually applies to other types of recordable documents, the Office views it as persuasive guidance as to how Congress would want the signature requirement to be interpreted in this context. The Government Paperwork Elimination Act is also persuasive, in that it directs executive agencies to provide “for the

²² 722 F.3d at 601-02.

²³ *Id.*

²⁴ 208 F. Supp. 3d 1105, 1112-14, (C.D. Cal. 2016), *appeal docketed*, No. 16-56471 (9th Cir. Oct. 7, 2016).

²⁵ *Id.*

option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper” and “for the use and acceptance of electronic signatures, when practicable.”²⁶ The Office agrees with the Brauneis Report’s assessment that this “Act expresses the intent of Congress to enable citizens to interact electronically with the federal government, and in particular to be able to use electronic signatures whenever signatures are required in documents submitted to the government.”²⁷

The Brauneis Report, however, raised concern over broadening the definition too far, noting that doing so could potentially include “acts that do not generate a trace that is easily remitted as ‘a signature’ on ‘a document.’”²⁸ As a result, the Brauneis Report recommended requiring that the signature be in a “‘discrete and identifiable form’ on the remitted document.”²⁹ The Office proposes resolving this concern another way. Rather than restrict the definition of signature, the proposed rule would require that where an actual signature is not a handwritten or typewritten name, such as when an individual clicks a button on a website or application to agree to terms of use, the remitter would be required to submit evidence demonstrating the existence of the signature. For example, the remitter could append a database entry or confirmation email to a copy of the terms showing that a particular user agreed to them by clicking “yes” on a particular date. While remitters may be confronted with more challenging scenarios, the Office is inclined to leave it to the remitter to decide how best to show the Office that a particular submitted document has been signed. The Office will then assess such evidence on a case-by-case basis to determine eligibility for recordation.

²⁶ See Pub. L. No. 105-277, tit. xvii, sec. 1704, 112 Stat. 2681, 2681-750 (1998).

²⁷ See *Brauneis Report* at 63.

²⁸ *Id.* at 66.

²⁹ *Id.*

Lastly, the Office notes that the proposed regulatory definition of “actual signature” is consistent with section 205 of the Copyright Act. Congress’s use of the word “actual” does not appear to do anything more than differentiate the signature on an original document from the reproduction of that signature on a copy of the document. The “or” in section 205(a) and the explanation in the Copyright Act’s legislative history indicate that either the original document with its “actual signature” can be submitted for recordation or a true copy that does not bear an “actual signature” but is of the “original, signed document” can be submitted instead.³⁰

Certifications. Under the proposed amendment, remitters would be required to provide essentially two sets of certifications. First, the Office proposes that the remitter must personally certify that he or she has appropriate authority to submit the document for recordation and that the information submitted to the Office by the remitter is true, accurate, and complete to the best of the remitter’s knowledge. Unlike the other certifications, discussed below, which pertain to the actual document being submitted for recordation, these concern the remitter’s authority to make the recordation and the veracity of the indexing and other information provided as a part of the submission. For electronic submissions, it is envisioned that these certifications will be made through the new system by checking a box and/or electronically signing one’s name. For paper submissions, the remitter could make these certifications by signing, either electronically or by hand, the required cover sheet.

³⁰ See 17 U.S.C. 205(a) (stating that a document “may be recorded . . . if the document . . . bears the actual signature of the person who executed it, *or* if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document.”) (emphasis added); H.R. REP. NO. 94-1476, at 128 (1976) (“Any ‘document pertaining to a copyright’ may be recorded under subsection (a) if it ‘bears that actual signature of the person who executed it,’ or if it is appropriately certified as a true copy.”); S. REP. NO. 94-473, at 112 (1975) (same).

Second, the proposed amendment would require certifications that the document conforms to the Office's completeness, legibility, and redaction rules, discussed below. Where the submitted document is a copy, a sworn or official certification would also be required. Section 205(a) specifically requires this last certification, stating that a document may be recorded "if it is accompanied by a sworn or official certification that it is a true copy of the original, signed document."³¹ The statute further explains that "[a] sworn or official certification may be submitted to the Copyright Office electronically, pursuant to regulations established by the Register of Copyrights."³²

The proposed rule would not substantively alter the definition of "official certification," but clarifies that it can be signed electronically whether submitted electronically or on paper. The proposed amendment would, however, simplify the definition of "sworn certification," as recommended by the Brauneis Report,³³ in addition to making the same clarification regarding electronic signatures. Under the current definition, a sworn certification can be an affidavit under the official seal of any officer authorized to administer oaths within the United States, or if the original is located outside of the United States, under the official seal of any diplomatic or consular officer of the United States or of a person authorized to administer oaths whose authority is proved by the certificate of such an officer, or a statement in accordance with 28 U.S.C. 1746.³⁴ The Office has rarely received certifications in the form of affidavits under official seal and is frequently asked questions by confused remitters regarding what can constitute a sworn certification. Thus, the Office believes it will be easier, simpler, and

³¹ 17 U.S.C. 205(a).

³² *Id.*

³³ *See Brauneis Report* at 67-68.

³⁴ 37 CFR 201.4(a)(3)(i).

less likely to confuse remitters who may think this requirement is more burdensome than intended, to only permit certifications in the form of statements that comply with 28 U.S.C. 1746. That provision essentially states that wherever a law requires or permits a matter to be supported by a sworn certification, such matter can instead be supported by an *unsworn* certification if it is in writing, dated, signed, made under penalty of perjury, and in “substantially” the form prescribed by the statute.³⁵

Consequently, the Office proposes that as part of any submission of a copy of a document for recordation, a certification be included along the lines of the following:

I certify under penalty of perjury under the laws of the United States of America that the accompanying document being submitted to the U.S.

Copyright Office for recordation is, to the best of my knowledge, a true and correct copy of the original, signed document.

Adding that the certification is being made to the best of the certifier’s knowledge, should address concerns referenced in the Brauneis Report that in many cases the certifier may not have access to the original document and thus would not be in a position to definitively swear to the submitted copy being a true copy of the original, signed document.³⁶ The changes to section 1746’s form language appear to be permissible, as the statute only requires that the certification be in “substantially” the prescribed form.³⁷

³⁵ 28 U.S.C. 1746 (such form being, “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)”).

³⁶ See *Brauneis Report* at 68-69.

³⁷ See 28 U.S.C. 1746; see also *Cobell v. Norton*, 391 F.3d 251, 260 (D.C. Cir. 2004) (“28 U.S.C. § 1746 contemplate[s] as adequate certifications that are ‘substantially’ in the form of the language of their provisions. A declaration or certification that includes the disclaimer ‘to the best of [the declarant’s] knowledge, information or belief’ is sufficient under . . . the statute.”); *Dye v. Kopiec*, No. 16 Civ. 2952 (LGS), 2016 U.S. Dist. LEXIS 175144, at *5 (S.D.N.Y. Dec. 16, 2016) (declaration including the phrase

Allowing the certification to be signed electronically appears to be permissible as well based on case law under 28 U.S.C 1746³⁸ and the language in 17 U.S.C. 205(a) that expressly permits sworn or official certifications to be submitted to the Office “electronically, pursuant to regulations established by the Register.”³⁹

The Office also proposes expanding the categories of people who can make such a certification to include not only one of the parties to the signed document and the authorized representative of such party, but also any person having an interest in a copyright to which the document pertains, as well as such person’s authorized representative. The Brauneis Report notes that there are many situations where no party to the document is available to sign the certification or authorize a representative to do so.⁴⁰ Recognizing this, the amended language will alternatively permit others, such as successors in interest or third-party beneficiaries, to sign it or have their own representative do so on their behalf. The Office will likely require any authorized representative to specify who they represent and any non-party to briefly describe the nature of his or her relevant copyright interest.

“to the best of my knowledge, information and belief” was a “slight variation . . . [from] the affirmation prescribed by 28 U.S.C. § 1746 [and] is not sufficient to reject Defendant’s declaration”).

³⁸ See, e.g., *U.S. v. Hyatt*, No. 06-00260-WS, 2008 U.S. Dist. LEXIS 16253, at *6-7 (S.D. Ala. Mar. 3, 2008) (“1746 do[es] not expressly require a signature by hand It appears that courts have routinely concluded that electronic signatures have the same effect as hand signatures unless court rules provide otherwise.”); *W. Watersheds Project v. BLM*, 552 F. Supp. 2d 1113, 1123 (D. Nev. 2008) (declaration “contain[ing] an indication of an electronic signature” permitted under section 1746); *Tishcon Corp. v. Soundview Commc’ns, Inc.*, No. 1:04-CV-524-JEC, 2006 U.S. Dist. LEXIS 97309, at *10-12 (N.D. Ga. Feb. 14, 2006) (declaration with electronic signature permitted under section 1746, as it “evinced [the declarant’s] intention to submit sworn declarations”)

³⁹ See 17 U.S.C. 205(a). This language was added to section 205(a) in 2010 to “make [the copyright system and] the Office’s operations more efficient,” “facilitate [the Office’s] transition to digital files and record keeping,” and “make it easier for filers to submit documents electronically.” 156 CONG. REC. S6594 (daily ed. Aug. 2, 2010) (statement of Sen. Leahy, Chairman, S. Comm. on the Judiciary); see Copyright Cleanup, Clarification, and Corrections Act of 2010, Pub. L. No. 111-295, 124 Stat. 3180 (2010).

⁴⁰ See *Brauneis Report* at 67-68.

It is currently envisioned that whether a submission is made electronically or on paper, the remitter can, but need not, be the one to make this second set of required certifications (concerning completeness, legibility, redactions, and being a true copy of the original document). The Office understands that the actual remitter—the person logging into the electronic system or filling out the document coversheet—may be a paralegal or other support staff member, and may not necessarily be in a position to make these certifications. As a result, while the electronic system and paper cover sheet will likely have a place where the remitter can make these certifications, in order to provide greater filing flexibility, the Office also intends to permit the remitter to instead attach a separate certifying statement made by another individual. The Office will likely provide a standard form certification and require that it be used in such situations. When making a paper submission, the form would be included along with the cover sheet and document. When submitting electronically, the remitter would be able to upload a digital scan of the signed certification form.

Completeness and Legibility. As under current regulations, the Office will continue to require documents submitted for recordation to be complete and legible. The Office proposes simplifying the completeness requirement to only mandate that the document be complete by its terms, and include all referenced schedules, appendices, exhibits, addenda, or other material essential to understanding the *copyright-related* aspects of the document. This is a change from current practice, where the Office requires people to submit documents including all schedules, or provide an explanation for why such material cannot be provided. In contrast, under the proposed amendments, if, for example, a document has several schedules, but only one has any relevance to the

copyright-related terms of the agreement, the document would be deemed complete so long as that schedule is included; the other schedules can be omitted. The Office sees no reason to burden remitters with having to submit and Office staff with having to review what can often be a significant volume of material completely unrelated to the copyright terms of the document.

Redactions. Currently, the Office permits documents submitted for recordation to contain redactions as an interim practice, not codified in the Office’s regulations.⁴¹ The proposed rule codifies and amends this policy. Most significantly, the proposed rule would limit redactions to certain sensitive information, including financial, trade secret, and personally identifiable information. This approach largely comports with the Brauneis Report, which suggested that “[a] redaction regulation formulated as a list of specific redaction categories that are allowed, rather than as a general prohibition on redactions that obscure the essential terms of a transaction, may be easier for remitters to follow.”⁴²

Additionally, in response to the Brauneis Report’s fear that, on the other hand, a specific list of permitted redaction categories may deter recordation in certain circumstances,⁴³ the Office intends to allow remitters to request and justify in writing the need to redact any other information, which the Office may permit in its discretion. It is envisioned that if the remitter is submitting the document electronically, such requests could made directly through the new system. The Office does not, however, plan to build redaction tools into the new system, so any redactions would need to be made prior to

⁴¹ See 70 FR 44049, 44051 (Aug. 1, 2005); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 2309.9(E) (3d ed. 2014).

⁴² See *Brauneis Report* at 81.

⁴³ See *id.*

uploading the document. As under the Office's current interim guidance, blank or blocked-out portions of the document will need to be labeled "redacted" or an equivalent and all portions of the document required by the simplified completeness requirement must be included, even if an entire page is redacted. The proposed amendment also adds that upon request, for review purposes, the remitter may be required to supply the Office with an unredacted copy of the document or additional information about the redactions.

English Language Requirement. The Office proposes to continue accepting and recording non-English language documents only if accompanied by an English translation signed by the individual making the translation. The Office further proposes to extend the translation requirement to any indexing information provided by the remitter. Whether a document is submitted via the paper or electronic process, a translation is necessary for Office staff to review the document and confirm its eligibility for recordation. Additionally, when submitted pursuant to the paper process, the translation is also needed for staff to index the document.

For non-English language documents submitted electronically through the new system, it is anticipated that the system will be able to accommodate the remitter providing indexing information in the native language of the document, rather than in English. But, while the Office proposes to accept non-English indexing information into the electronic system, it still needs a translation of that information for review purposes. The Office also believes it in the public's best interest to continue requiring English translations and to make those translations publicly available so that those who may have an interest in a particular copyrighted work, but who may not speak the native language of a pertinent document, can still learn of the document's existence and understand its

basic meaning. The Office also notes that this requirement is in accord with the U.S. Patent and Trademark Office's recordation regulations.⁴⁴ As the Office proposes to continue making all translations available for public inspection, as done currently, it also proposes that they be subject to the same redaction rules applicable to the underlying documents.

Indexed Information. Though the Office is disinclined to list specific categories of indexing information in its regulations, the Office seeks input on what indexing information the Office should ask remitters to provide. For example, document type, parties, party addresses, third-party beneficiaries, date of execution, effective date, title information (including copyright owner and author identity, alternate titles, related registration numbers, and standard identifiers for both works and authors), and related recordation numbers are among the information being contemplated.

Parties Bear Consequences of Inaccuracies. The Office intends to continue its current practice of relying on the information provided by remitters for indexing purposes and requiring parties in interest to bear the consequences of any inaccuracies in such information. The Office has previously determined that “for the rule to result in the efficient cataloging of documents submitted for recordation, the burden for creating accurate electronic title lists, and thus the legal consequences for failing to do so, must be on the remitter.”⁴⁵ The proposed rule carries this conclusion to all remitter-provided information, including not just electronic title lists, but also the cover sheet

⁴⁴ See 37 CFR 3.26 (“The [Patent and Trademark] Office will accept and record non-English language documents only if accompanied by an English translation signed by the individual making the translation.”).

⁴⁵ 79 FR at 55634-35 (also discussing Office's authority to do so); *accord Brauneis Report* at 93-99 (“[T]his report recommends burdening remitters . . . with the responsibility to provide accurate cataloging information . . .”).

accompanying paper submissions and any information provided through the new electronic recordation system. The proposed amendment also clarifies that it is not necessarily always the remitter who bears the consequences of inaccuracies. More accurately, it is the parties to the remitted document, including any successors in interest or third-party beneficiaries who bear the consequences, if any, of any inaccuracies in the information provided to the Office by the remitter.

The Office is inclined to also continue its current general practice of not permitting corrections to be made for any such inaccuracies after the document is recorded. Instead, as now, the remitter would need to resubmit the document for recordation with corrected information and it will be treated as any other first-time-submitted document, though the Office's catalog record for both the original and corrected recordations will likely be linked to make clear that an updated filing was made. For purposes of uniformity and efficiency, the Office is inclined to discontinue permitting corrections of inaccurate electronic title lists that accompany paper filings. Such errors should be treated the same as if the error was made on the cover sheet or through the new system. With the introduction of the new system and what will likely be a significant reduction in paper filings, the Office sees no reason to continue special treatment of electronic title lists going forward. To have an efficient recordation system with an affordable fee, it is simply impractical for Office staff to review all remitter-provided indexing information, which also means that it would be very difficult to review "corrected" submissions against the original to confirm that the remitter is not attempting to do something improper under the guise of a correction.

Recordation Certificate and Returning of Document. As before, once recorded, the document will be returned to the remitter with a certificate of recordation, as required by section 205(b). Currently, all recorded documents are digitally imaged and electronically stamped with the document's official recordation number and page numbers. This stamped copy is then printed and sent to the remitter with a paper recordation certificate. Where an original document is submitted, it is also returned. The Office intends to continue this process for paper submissions. For electronic submissions, as recommended by the Brauneis Report, the Office intends to discontinue printing and mailing certificates of recordation and stamped copies of recorded documents once the new system is launched.⁴⁶ Instead, the Office plans to email the certificate and stamped copy of the document to the remitter and make them available to the remitter electronically through his or her system account. Doing so will be faster and less expensive than continuing to manually print and mail them which will help bring down the overall recordation filing fee. The Office intends to still make paper certificates and print outs of the stamped copy of a document available to electronic filers wanting one for an additional fee.

Public Availability of Recorded Documents. Currently, while indexed information about recorded documents is available to the public through the Office's online catalog, the documents themselves are not. They are only available for in-person inspection at the Office's reading room in Washington, D.C. or by making a search and retrieval request. The Office plans, as recommended by the Brauneis Report,⁴⁷ to update this practice going

⁴⁶ See *Brauneis Report* at 108-09 ("Stakeholders were uniformly in favor of receiving recorded documents and certificates electronically rather than on paper.").

⁴⁷ See *id.* at 76-83.

forward by making all documents recorded after the launch of the new system available on the internet, regardless of whether the document was submitted through the new system or via the paper process described above. The Office sees no reason why someone should be required to travel to Washington, D.C. or to make an expensive search and retrieval request to view these records. Privacy, confidentiality, and other related concerns with making these documents available online should be allayed by the proposed redaction rules discussed above.

In the future, the Office intends to explore also making documents recorded prior to the system's introduction available online, and will issue an NPRM on the subject at a later date to address issues such as redaction.

Constructive Notice. The proposed amendment makes clear that for constructive notice under 17 U.S.C. 205(c) to attach with regard to works to which a recorded document pertains, the document must include or be accompanied by the title and copyright registration number of each such work.⁴⁸

B. Notices of Termination

The proposed amendment to 37 CFR 201.10(f) concerning submission of notices of termination to the Copyright Office for recordation largely tracks the proposed amendment to 37 CFR 201.4 discussed above, to the extent applicable. The Office notes that it is not proposing any changes to the form, content, or manner of service of notices of termination at this time; only how they are submitted to the Office for recordation.

⁴⁸ See H.R. REP. NO. 94-1476, at 128 (1976) (“[S]ubsection (c) makes clear that the recorded document will give constructive notice of its contents only if two conditions are met: (1) the document or attached material specifically identifies the work to which it pertains so that a reasonable search under the title or registration number would reveal it, and (2) registration has been made for the work.”); S. REP. NO. 94-473, at 112 (1975) (same).

As with documents submitted for recordation under section 205, remitters will be able to submit notices of termination for recordation either electronically through the new system or in paper hardcopy. To record a notice, it will need to satisfy the Office's requirements, be submitted in accordance with the Office's rules and instructions, and be accompanied by the appropriate filing fee. Unlike section 205 documents, for which recordation is optional, notices of termination must be recorded with the Office "as a condition to its taking effect."⁴⁹ As before, the date of recordation will be the date when all of the required elements are received by the Office, and the Office may reject any notice submitted for recordation that fails to comply with the Office's rules and instructions.

Submission Requirements. The proposed requirements governing what must be submitted to the Office for recordation remain essentially unchanged. Remitters would be required to provide a complete and legible copy of the signed notice of termination as served on the grantee or successor in title. If separate copies of the same notice were served on more than one grantee or successor, only one copy would need to be submitted to the Office for recordation. The proposed amendment clarifies some ambiguity about the form of the signature appearing on the notice. The manner by which notices are to be signed is governed by paragraph (c) of 37 CFR 201.10, not paragraph (f), and the proposed rule makes clear that however the notice is signed, what must be submitted to the Office for recordation is a copy of the as-served notice, including the reproduced image of the signature as it appeared on that served notice.

⁴⁹ 17 U.S.C. 203(a)(4)(A), 304(c)(4)(A), 304(d)(1).

As now, the proposed rule would also require remitters to submit a statement setting forth the date on which the notice was served and the manner of service, unless that information is already contained within the notice itself. Also as under the current rule, the proposed amendment makes clear that where service was made by first class mail, the date of service is the day the notice was deposited with the post office. The Office's timeliness rule also would remain unchanged. The Office will continue to refuse notices if they are untimely. Such scenarios where a notice would be deemed untimely include when the effective date of termination does not fall within the five-year period described in section 203(a)(3) or section 304(c)(3), as applicable, the documents submitted indicate that the notice was served less than two or more than ten years before the effective date of termination, and the date of recordation is after the effective date of termination.

Lastly, the proposed rule would add a requirement for various certifications. The remitter would have to personally certify that he or she has appropriate authority to submit the notice for recordation and that all information submitted to the Office by the remitter is true, accurate, and complete to the best of the remitter's knowledge. The proposed amendment would also require submission of certifications, which need not be made by the remitter, that the copy of the notice being submitted is a true, correct, complete, and legible copy of the as-served signed notice. Procedurally, the submission of these certifications would work the same way as described above for the certifications relevant to section 205 recordations.

Submission Procedure. Electronic submission through the to-be-developed system would work basically the same as for section 205 documents discussed above, but will be

tailored specifically to the needs of notices of termination. As with section 205 recordations, the new system will essentially require the remitter to provide four things: the notice to be recorded, indexing information about the notice (*i.e.*, information necessary for the Office's public catalog), assent to various certifying statements, and payment of the applicable fee. It is intended that the new system will walk remitters through the process of providing all pertinent indexing information, helping to facilitate along the way that the notice is being made pursuant to the correct statutory provision and providing guidance as to applicable time limits, among other things. The Office intends to retain a paper submission process for notices of termination that will largely track the Office's current process, but will add the requirement of a cover sheet which will serve the same function as the cover sheet required for section 205 submissions discussed above. The Office also proposes offering return receipts for notices of termination upon the same terms offered for section 205 submissions.

Parties Bear Consequences of Inaccuracies. As with section 205 documents, and for the same reasons discussed above, the Office will rely on the information provided by remitters for indexing purposes and require parties in interest to bear the consequences of any inaccuracies in such information. Similarly, the Office is also inclined in the notice of termination context to continue its current general practice of not permitting corrections to be made for any such inaccuracies after the notice is recorded. Instead, as now, the remitter would need to resubmit the notice for recordation with corrected information and it will be treated as any other first-time-submitted notice, though the Office's catalog record for both the original and corrected recordations will likely be linked to make clear that an updated filing was made.

Recordation Certificate and Returning of Notice. As with section 205 documents, and for the same reasons discussed above, for electronic submissions, the Office proposes to discontinue printing and mailing certificates of recordation and stamped copies of recorded notices of termination once the new system is launched. Instead, the Office plans to email the certificate and stamped copy of the notice to the remitter and make them available to the remitter electronically through his or her system account. The Office intends to still make paper certificates and print outs of the stamped copy of a notice of termination available to electronic filers wanting one for an additional fee.

Public Availability of Recorded Notices. The Office is disinclined to make notices of termination available online to the public, as the Office believes that all pertinent information contained in a notice of termination is contained in the indexed information made part of the Office's online public catalog. This is in contrast to documents recorded under section 205 where relevant information may be contained in the document itself, but not the catalog record. However, the Office invites comment on whether posting scans of the actual notices online would be useful and whether there are any implications involved in doing so, such as a need to permit redactions. The Office notes that the actual notices are currently available to the public for in-person inspection in its reading room or through a search and retrieval request.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

2. Revise § 201.4 to read as follows:

§ 201.4 Recordation of transfers and other documents pertaining to copyright.

(a) *General.* This section prescribes conditions for the recordation of transfers of copyright ownership and other documents pertaining to a copyright under 17 U.S.C. 205.

A document is eligible for recordation under this section if it meets the requirements of paragraph (d), if it is submitted in accordance with the submission procedure described in paragraph (e), of this section, and if it is accompanied by the fee specified in 37 CFR 201.3(c). The date of recordation is the date when all of the elements required for recordation, including a proper document, fee, and any additional required information, are received in the Copyright Office. After recordation the document is returned to the sender with a certificate of recordation. The Office may reject any document submitted for recordation that fails to comply with 17 U.S.C. 205 or the requirements of this section.

(b) *Documents not recordable under this section.* This section does not govern the filing or recordation of the following documents:

(1) Certain contracts entered into by cable systems located outside of the 48 contiguous States (17 U.S.C. 111(e); see 37 CFR 201.12);

(2) Notices of identity and signal carriage complement, and statements of account of cable systems and satellite carriers and for digital audio recording devices and media (17 U.S.C. 111(d), 119(b), and 1003(c); see 37 CFR 201.11, 201.17, 201.28);

- (3) Notices of intention to obtain compulsory license to make and distribute phonorecords of nondramatic musical works (17 U.S.C. 115(b); see 37 CFR 201.18);
- (4) Notices of termination (17 U.S.C. 203, 304(c) and (d); see 37 CFR 201.10);
- (5) Statements regarding the identity of authors of anonymous and pseudonymous works, and statements relating to the death of authors (17 U.S.C. 302);
- (6) Documents pertaining to computer shareware and donation of public domain software (Pub. L. No. 101-650, sec. 805; see 37 CFR 201.26);
- (7) Notifications from the clerks of the courts of the United States concerning actions brought under title 17, United States Code (17 U.S.C. 508);
- (8) Notices to libraries and archives of normal commercial exploitation or availability at reasonable prices (17 U.S.C. 108(h)(2)(C); see 37 CFR 201.39);
- (9) Submission of Visual Arts Registry Statements (17 U.S.C. 113; see 37 CFR 201.25);
- (10) Notices and correction notices of intent to enforce restored copyrights (17 U.S.C. 104A(e); see 37 CFR 201.33, 201.34); and
- (11) Designations of agents to receive notifications of claimed infringement (17 U.S.C. 512(c)(2); see 37 CFR 201.38).

(c) *Definitions.* For purposes of this section:

- (1) A *transfer of copyright ownership* has the meaning set forth in 17 U.S.C. 101.
- (2) A *document pertaining to a copyright* is any document that has a direct or indirect relationship to the existence, scope, duration, or identification of a copyright, or to the ownership, division, allocation, licensing, or exercise of rights under a copyright. That relationship may be past, present, future, or potential.

(3) An *actual signature* is any legally binding signature, including an electronic signature as defined in 15 U.S.C. 7006.

(4) A *sworn certification* is a statement made in accordance with 28 U.S.C. 1746 that the copy of the document submitted for recordation is, to the best of the certifier's knowledge, a true copy of the original, signed document. A sworn certification must be signed by at least one of the parties to the signed document, any person having an interest in a copyright to which the document pertains, or the authorized representative of such person or party. A sworn certification may be signed electronically whether submitted electronically or on paper.

(5) An *official certification* is a certification, by the appropriate governmental official, that the original of the document is on file in a public office and that the copy of the document submitted for recordation is a true copy of the original. An official certification may be signed electronically whether submitted electronically or on paper.

(d) *Document requirements.*

(1) *Original or certified copy.* The remitter must submit either the original document that bears the actual signatures of the persons who executed it, or a copy of the original, signed document accompanied by a sworn certification or an official certification. All documents submitted via the electronic submission process in paragraph (e)(1) of this section, and all documents lacking a handwritten, wet signature (including all documents bearing an electronic signature) submitted through either the paper or electronic submission process, are considered to be copies of the original, signed document, and must be accompanied by a sworn certification or an official certification. Where an actual signature is not a handwritten or typewritten name, such as when an individual clicks a

button on a website or application to agree to terms of use, the remitter must submit documentation evidencing the existence of the signature, which the Office will assess on a case-by-case basis to determine eligibility for recordation. For example, the remitter could append a database entry or confirmation email showing that a particular user agreed to the terms of use by clicking “yes” on a particular date.

(2) *Completeness*. Each document submitted for recordation must be, and certified to be, complete by its terms, and include all referenced schedules, appendices, exhibits, addenda, or other material essential to understanding the copyright-related aspects of the document.

(3) *Legibility*. Each document submitted for recordation must be, and certified to be, legible.

(4) *Redactions*. The Office will accept and make available for public inspection redacted documents provided—

(i) The redactions are limited to financial terms, trade secret information, social security or taxpayer-identification numbers, and financial account numbers, or the need for any redactions is justified to the Office in writing and approved by the Office;

(ii) The blank or blocked-out portions of the document are labeled “redacted” or the equivalent;

(iii) Each portion of the document required by paragraph (d)(2) of this section is included; and

(iv) Upon request, information regarding any redactions and/or an unredacted version of the document is provided to the Office for review.

(5) *English language requirement.* The Office will accept and record non-English language documents and indexing information only if accompanied by an English translation signed by the individual making the translation. All translations will be made available for public inspection and may be redacted in accordance with paragraph (d)(4) of this section.

(6) *Titles of works and registration numbers.* With regard to a work to which a document pertains, to provide constructive notice of the facts stated in the document under 17 U.S.C. 205(c), the document must include or be accompanied by the title and copyright registration number of such work. Documents that do not provide such information will still be recorded by the Office, but will not provide such constructive notice with regard to such work.

(e) *Submission procedure.*

(1) *Electronic submission.* The Copyright Office has established an electronic system for submission of documents for recordation, available through the Copyright Office's website. Remitters must follow all instructions provided by the Office for use of that system, including by providing all indexing information requested by the Copyright Office. A remitter using the electronic system must upload an electronic copy of the document in the format requested by the system, provide all of the information requested by the system, and use the system to pay the required fee. Any document submitted for recordation through the electronic system must be accompanied by a certification, which must be made through the system, stating that the uploaded copy of the document is a true, correct, complete, and legible copy of the original, and if redacted, is redacted in accordance with paragraph (d)(4) of this section.

(2) *Paper submission.*

(i) *Process.* A document may be submitted for recordation by sending it to the appropriate address in 37 CFR 201.1(b) or to such other address as the Office may specify, accompanied by a cover sheet, the proper fee, and, if applicable, any electronic title list. Absent special arrangement with the Office, the Office will not process the submission unless all of the items necessary for processing are received together.

(ii) *Cover sheet required.* Paper submission of a document must include a completed Recordation Document Cover Sheet (Form DCS), available on the Copyright Office website. Form DCS may be used to provide a sworn certification, if appropriate, and to certify that the submitted document is complete, legible, and if redacted, redacted in accordance with paragraph (d)(4) of this section.

(iii) *Electronic title list.* In addition to identifying the works to which the document pertains in the paper submission, the remitting party may also submit an electronic list setting forth each such work. The electronic list will not be considered part of the recorded document, but will only be used by the Office for indexing purposes. Absent special arrangement with the Office, the electronic list must be included in the same package as the paper document to be recorded. The electronic list must be prepared and submitted to the Office in the manner specified by the Copyright Office in instructions it posts on its website. The Office may reject any document submitted for recordation that includes an improperly prepared electronic title list.

(iv) *Return receipt.* For paper submissions, if a remitter includes two copies of a properly completed Form DCS indicating that a return receipt is requested, as well as a self-addressed, postage-paid envelope, the remitter will receive a date-stamped return receipt

acknowledging the Copyright Office's receipt of the enclosed submission. The completed copies of Form DCS and the self-addressed, postage-paid envelope must be included in the same package as the submitted document. A return receipt confirms the Office's receipt of the submission as of the date indicated, but does not establish eligibility for, or the date of, recordation.

(3) *Remitter certification.* Whether making an electronic or paper submission, the remitter must certify that he or she has appropriate authority to submit the document for recordation and that all information submitted to the Office by the remitter is true, accurate, and complete to the best of the remitter's knowledge.

(f) *Parties to bear consequences of inaccuracies.* For purposes of indexing recorded documents in the Copyright Office's public catalog, the Office will rely on the information provided by the remitter via either the electronic recordation system or Form DCS (along with the accompanying electronic title list, if provided). The parties to the document remitted, including any successors in interest or third-party beneficiaries, will bear the consequences, if any, of any inaccuracies in the information the remitter has provided.

(g) *Public availability of recorded documents.* Documents accepted for recordation after [EFFECTIVE DATE OF RULE] will be posted publicly on the internet as submitted, including with any redactions made by the remitter.

3. Revise § 201.10(f) to read as follows:

§ 201.10 Notices of termination of transfers and licenses

* * * * *

(f) *Recordation.* A copy of a notice of termination shall be recorded in the Copyright Office as required by 17 U.S.C. 203(a)(4)(A), 17 U.S.C. 304(c)(4)(A), or 17 U.S.C. 304(d)(1) if it meets the requirements of paragraph (f)(1), is submitted in compliance with paragraph (f)(2) of this section, and is accompanied by the fee prescribed by 37 CFR 201.3(c). The Office may reject any notice submitted for recordation that fails to comply with 17 U.S.C. 203(a), 17 U.S.C. 304(c), 17 U.S.C. 304(d), or the requirements of this section.

(1) *Requirements.* The following requirements must be met before a copy of a notice of termination may be recorded in the Copyright Office.

(i) *What must be submitted.* (A) *Copy of notice of termination.* A copy of a notice of termination submitted for recordation must be, and certified to be, a complete and legible copy of the signed notice of termination as served. Where separate copies of the same notice were served on more than one grantee or successor in title, only one copy need be submitted for recordation.

(B) *Statement of service.* The copy submitted for recordation must be accompanied by a statement setting forth the date on which the notice was served and the manner of service, unless such information is contained in the notice. In instances where service is made by first class mail, the date of service shall be the day the notice of termination was deposited with the United States Postal Service.

(ii) *Timeliness.* (A) The Copyright Office will refuse recordation of a notice of termination as such if, in the judgment of the Copyright Office, such notice of termination is untimely. Conditions under which a notice of termination will be considered untimely include: the effective date of termination does not fall within the

five-year period described in section 203(a)(3) or section 304(c)(3), as applicable, of title 17, United States Code; the documents submitted indicate that the notice of termination was served less than two or more than ten years before the effective date of termination; or the date of recordation is after the effective date of termination.

(B) If a notice of termination is untimely, the Office will offer to record the document as a “document pertaining to copyright” pursuant to 37 CFR 201.4, but the Office will not index the document as a notice of termination.

(C) In any case where an author agreed, prior to January 1, 1978, to a grant of a transfer or license of rights in a work that was not created until on or after January 1, 1978, a notice of termination of a grant under section 203 of title 17 may be recorded if it recites, as the date of execution, the date on which the work was created.

(2) Submission procedure.

(i) *Electronic submission.* The Copyright Office has established an electronic system for submission of notices of termination for recordation, available through the Copyright Office’s website. Remitters must follow all instructions provided by the Office for use of that system, including by providing all indexing information requested by the Copyright Office. A remitter using the electronic system must upload an electronic copy of the notice of termination in the format requested by the system, provide all of the information requested by the system, and use the system to complete the statement of service required under paragraph (f)(1)(i)(B) of this section and to pay the required fee. Any notice submitted for recordation through the electronic system must be accompanied by a certification, which must be made through the system, stating that the uploaded copy of

the notice of termination is a true, correct, complete, and legible copy of the as-served signed notice.

(ii) *Paper submission.* (A) *Process.* A paper copy of a notice of termination may be submitted for recordation by sending it to the appropriate address in 37 CFR 201.1(c) or to such other address as the Office may specify, accompanied by a cover sheet, the statement of service, and the proper fee.

(B) *Cover sheet required.* Paper submission of a copy of a notice of termination must be accompanied by a completed Recordation Notice of Termination Cover Sheet (Form TCS), available on the Copyright Office website. Form TCS may be used to provide the statement of service and to certify that the submitted copy of the notice is a true, correct, complete, and legible copy of the as-served signed notice.

(C) *Return receipt.* For paper submissions, if a remitter includes two copies of a properly completed Form TCS indicating that a return receipt is requested, as well as a self-addressed, postage-paid envelope, the remitter will receive a date-stamped return receipt acknowledging the Copyright Office's receipt of the enclosed submission. The completed copies of Form TCS and the self-addressed, postage-paid envelope must be included in the same package as the submitted notice. A return receipt confirms the Office's receipt of the submission as of the date indicated, but does not establish eligibility for, or the date of, recordation.

(iii) *Remitter certification.* Whether making an electronic or paper submission, the remitter must certify that he or she has appropriate authority to submit the notice for recordation and that all information submitted to the Office by the remitter is true, accurate, and complete to the best of the remitter's knowledge.

(3) *Date of recordation.* The date of recordation is the date when all of the elements required for recordation, including the prescribed fee and, if required, the statement of service referred to in paragraph (f)(2)(ii) of this section, have been received in the Copyright Office. After recordation, the notice, including any accompanying statement, is returned to the sender with a certificate of recordation.

(4) *Effect of recordation.* The fact that the Office has recorded the notice does not mean that it is otherwise sufficient under the law. Recordation of a notice of termination by the Copyright Office is without prejudice to any party claiming that the legal and formal requirements for effectuating termination (including service of the notice of termination) have not been met, including before a court of competent jurisdiction.

(5) *Parties to bear consequences of inaccuracies.* For purposes of indexing recorded notices in the Copyright Office's public catalog, the Office will rely on the information provided by the remitter via either the electronic recordation system or Form TCS (along with any accompanying statement of service, if provided). The grantors and grantees associated with the notice of termination, including any successors in interest, will bear the consequences, if any, of any inaccuracies in the information the remitter has provided.

Dated: May 10, 2017.

Sarang V. Damle,
General Counsel and
Associate Register of Copyrights.

[BILLING CODE 1410-30-P]

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